

Message Text

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ORIGIN EB-08

INFO OCT-01 EUR-12 ISO-00 L-03 CAB-02 CIAE-00 COME-00
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DRAFTED BY EB/OA/AVP:GGRIFITHS:SP
APPROVED BY EB/OA:MHSTYLES
EB/OA/AVP:AJWHITE
EUR/NE:DGOODMAN(SUBSTANCE)
L/EB:SKLING
EUR/CAN:GMONROE(SUBSTANCE)
EB/TRA:JATWOOD

-----045903 090208Z /75

P 082116Z SEP 78
FM SECSTATE WASHDC
TO AMEMBASSY LONDON PRIORITY
AMEMBASSY OTTAWA PRIORITY

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E.O. 11652: N/A

TAGS: EAIR, CA, UK

SUBJECT: CIVAIR: UK ATTEMPT TO COLLECT CANADIAN CHARGES

REF: A) LONDON 13522; (B) OTTAWA 04203

1. US AIRLINES' UK SOLICITOR (FRESHFIELDS) RECEIVED CAA
LETTER DATED AUGUST 23 RE CANADIAN USER CHARGES. KEY
PARTS OF CAA LETTER FOLLOWS:

QUOTE DEAR SIRS

CIVIL AVIATION CANADIAN NAVIGATION SERVICES CHARGES
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REGULATIONS 1977

I REFER TO YOUR LETTER OF 30 NOV 1977 IN WHICH YOU STATED
THAT U WERE OBTAINING YOUR CLIENTS INSTRUCTIONS CONCERNING
THE PAYMENT OF THE INVOICES ISSUED BY THE AUTHORITY
PURSUANT TO THE ABOVE REGULATIONS STOP

THE AUTHORITY HAS HEARD NOTHING FURTHER FROM U- SINCE 30 NOV 1977 AND NO PAYMENTS HAVE BEEN RECD FROM UR THREE CLIENTS IN RESPECT OF ANY OF THE INVOICES ISSUED UNDER THE ABOVE REGULATIONS STOP

THE AUTHORITY HAS HEARD NOTHING FURTHER FROM U SINCE 30 NOV 1977 AND NO PAYMENTS HAVE BEEN RECD FROM UR THREE CLIENTS IN RESPECT OF ANY OF THE INVOICES ISSUED UNDER THE ABOVE REGULATIONS STOP

THE TOTAL OUTSTANDING INDEBTEDNESS OF UR CLIENTS AT 31 JUL 1978 WAS AS FOLLOWS

TRANSWORLD AIRLINES INC CANADIAN DOLLARS 1 316 348.00
PAN AMERICAN WORLD AIRWAYS INC CAN DOLLARS 1 065 864.00
SEABOARD WORLD AIRLINES INC CAN DOLLARS 177 580.00

I ENCLOSE COPIES OF THE AUTHORITIES LEDGER CARDS RELATING TO THE THREE AIRLINES WHICH SHOW DETAILS OF THE INVOICES ISSUED AND THE CUMULATIVE BALANCE OUTSTANDING AT END OF EACH MONTH. THE AUTHORITY HAS HIHERTO BEEN EXTREMELY PATIENT IN THIS MATTER BUT IT CANNOT ALLOW THIS SITUATION TO CONTINUE ANY LONGER STOP

ACCORDINGLY I HAVE TO ADVISE YOU THAT UNLESS PAYMENT IS RECEIVED WITHIN 21 DAYS OF THE DATE OF THIS LETTER I AM LIMITED OFFICIAL USE

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INSTRUCTED TO INSTITUTE PROCEEDINGS FOR RECOVERY OF THESE DEBTS TOGETHER WITH ANY COSTS THAT MAY BE INCURRED STOP FINALLY I SHUD BE GRATEFUL IF YOU WOULD CONFIRM THAT U ARE AUTHORISED TO ACCEPT SERVICE OF PROCEEDINGS AGAINST ALL THREE AIRLINES REFERRED TO ABOVE

KG HARRIES UNQUOTE

SEPTEMBER 13 NOW BECOMES THE DAY ON WHICH THE 21 DAYS WILL EXPIRE.

2. HALL LETTER QUOTED REF A RAISES SEVERAL POINTS WHICH DEPARTMENT WOULD LIKE TO ADDRESS. LETTER MENTIONED MEMORANDUM OF CONSULTATIONS OF MARCH 17 IN CONTEXT WHICH GAVE IMPRESSION THAT MOC SOMEHOW WAS FAVORABLE TO BRITISH POSITION THIS ISSUE. THIS IS SIMPLY NOT THE CASE, AS A READING OF PARA 9 OF THE MOC INDICATES:

QUOTE THE UNITED KINGDOM AUTHORITIES WOULD EXPEDITIOUSLY EXAMINE THE PROBLEM RAISED BY THE UNITED STATES AUTHORITIES CONCERNING THE PROBLEM OF THE LEVYING OF CANADIAN AIR NAVIGATION CHARGES BY THE UNITED KINGDOM CIVIL AVIATION

AUTHORITY AND WOULD GIVE THE UNITED STATES AUTHORITIES
A CONSIDERED RESPONSE AS SOON AS POSSIBLE VIA THE BRITISH
EMBASSY IN WASHINGTON. UNQUOTE

HALL ALSO MENTIONED QUOTE VARIOUS ORAL EXCHANGES UNQUOTE
ABOUT THIS PROBLEM DURING THE MEETINGS IN LONDON AND
WASHINGTON EARLIER THIS YEAR, AND CITES A SHOVELTON-
ATWOOD EXCHANGE AS AN EXAMPLE. HOWEVER, THE SUBSTANCE OF
THAT EXCHANGE IS REMEMBERED QUITE DIFFERENTLY HERE.
ATWOOD REMEMBERS SHOVELTON STATING HE HAD RECEIVED
CONFLICTING LEGAL OPINIONS FROM HIS PEOPLE ON THE MATTER
AND HAD ASKED THAT THE LEGAL DISPUTE (APPARENTLY BETWEEN
THE FOREIGN OFFICE AND THE CAA) BE RESOLVED. UNTIL IT
WAS RESOLVED, HE HAD DIRECTED THAT NO FURTHER ACTION BE
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TAKEN. HE ALSO TOLD ATWOOD IT WOULD BE HELPFUL IF THE US
CARRIERS DID NOT ATTEMPT TO DRAG OUT THE ISSUE IN THE
CANADIAN COURTS.

IN ADDITION, AT MARCH 17 RECEPTION FOLLOWING SIGNING OF
AGREEMENT, GRIFFITHS BRIEFLY DISCUSSED MATTER WITH IAN
BROWN WHO INDICATED HE DID NOT UNDERSTAND WHAT THE CAA
WAS UP TO, OR WHY, AND STATED THAT EILEEN (EILEEN DENZA)
FELT BRITISH SHOULD NOT PROCEED FURTHER ON THIS MATTER.

3. BRITISH ARGUMENTS SEEM SO THIN TO DEPT. COUNSEL THAT
WE ARE SOMEWHAT PUZZLED BY THEIR APPARENT WILLINGNESS TO
PURSUE THIS MATTER. BEYOND THE IMPLICATIONS OF UK'S
FAILURE TO RESPOND BY NOTE, IT MAY BE SIMPLY THAT THE
BRITISH HAVE NO INTENTION OF SERIOUSLY PRESSING AHEAD ON
THIS MATTER, BUT MAY WANT MERELY TO EMBROIL US CARRIERS
IN MORE LEGAL EXPENSE IN HOPE THAT CARRIERS WILL
EVENTUALLY TIRE OF ISSUE AND PAY THE CONTESTED CHARGES.

4. WHATEVER THEIR MOTIVATIONS, OR INTENTIONS, WE NOTE
THAT SEPTEMBER 13 IS FIRST APPROACHING AND THE UKG HAS
NOT YET RESPONDED BY FORMAL NOTE. USG HAS NO DESIRE TO
TRANSFORM THIS MATTER INTO ACTIVE ISSUE, AND WE HAD BEEN
QUITE CONTENT TO PROCEED PRIOR TO HALL LETTER WITHOUT
FORMAL BRITISH RESPONSE IN BELIEF THAT UK HAD BACKED OFF
AND WOULD LET ISSUE BE DECIDED IN CANADIAN COURTS.
WE STILL RETAIN THAT BASIC VIEW OF MATTER, I.E. WE WOULD
PREFER TO SEE ISSUE DECIDED BY CANADIAN COURTS. HOWEVER,
IF BRITISH ARE GOING TO PRESS THIS ISSUE, WE MUST RESPOND.

5. ACTION REQUESTED: IF, IN EMBASSY'S JUDGMENT, BRITISH
ARE GOING TO INITIATE PROCEEDINGS AFTER SEPTEMBER 13,
THEN EMBASSY SHOULD REPEAT REQUEST FOR FORMAL RESPONSE
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WHICH EXPLICITLY DEALS WITH POINTS RAISED IN OUR NOTE. IF, ON OTHER HAND, EMBASSY BELIEVES THAT UK NOT GOING TO PRESS MATTER, IN SPITE OF LETTER, THEN REQUESTING A FORMAL RESPONSE TO OUR NOTE MAY NOT BE BEST WAY TO PROCEED, I.E. IT MAY BE BEST TO LET THE ISSUE DIE A

SECOND NATURAL DEATH. EMBASSY REQUESTED EVALUATE SITUATION, PARTICULARLY WITH REFERENCE TO UK INTENTIONS. IF FURTHER UK ACTION APPEARS IMMINENT, EMBASSY SHOULD FORCEFULLY REPEAT REQUEST FOR URGENT, EXPLICIT UK RESPONSE TO OUR NOTE. IF FORMAL UK RESPONSE IS NEEDED IN EMBASSY'S OPINION, WE WOULD EXPECT RESPONSE NLT SEPT. 13. FOR OTTAWA: WEIGHT OF EVIDENCE STRONGLY SUGGESTS THAT GOC DOES NOT INTEND THAT PUNITIVE ACTION BE TAKEN BY UK BEFORE CASE IS DECIDED IN CANADIAN COURTS. THIS IS SUPPORTED BY REF B'S REPORT OF CONVERSATION WITH ST. JOHN. HOWEVER, THE POSSIBILITY OF PUNITIVE ACTION BY UKG APPEARS IMMINENT JUDGING FROM LONDON REPORTS AND FROM THE CAA LETTER CITED PARA 1 FOREGOING. THE INITIATION OF LEGAL PROCEEDINGS IN ITSELF CAN BE VIEWED AS PUNITIVE BECAUSE OF THE COST INVOLVED AND BECAUSE IT APPEARS UNDULY TO PRESSURE THE CARRIERS INVOLVED. THE RECENT DEVELOPMENTS IN THE UK STRIKE DEPARTMENT AS COUNTER-PRODUCTIVE SINCE THEY THREATEN TO ENLARGE THIS ISSUE WHICH WE FEEL SHOULD BE DECIDED ON ITS LEGAL MERITS IN CANADIAN COURTS.

ACCORDINGLY, EMBASSY IS REQUESTED TO REQUEST GOC TO RECONSIDER AND WITHDRAW WHATEVER PERMISSION WHICH HAS BEEN GIVEN TO THE UK TO PROCEED IN THIS MATTER. CHRISTOPHER

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Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
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